

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

HERMAN L. BARTON, JR.,

Plaintiff,

vs.

FREMONT STREET EXPERIENCE,

Defendant,

2:11-cv-2098-JCM-RJJ

REPORT & RECOMMENDATION
OF UNITED STATES
MAGISTRATE JUDGE

This matter is before the Court on the failure of Plaintiff, Herman L. Barton, to comply with Orders of the Court (#2 & #4).

The Court having reviewed this matter hereby makes the following findings:

1. On January 18, 2012, the Court entered an Order (#2) scheduling a status hearing in this case for February 23, 2012.
2. The Order (#2) was served on the Plaintiff, Herman L. Barton, Jr., by regular first class mail via the United States Postal Service. However, the Order (#2) was returned by the United States Postal Service marked "Return to Sender Unclaimed Unable to Forward". *See*, Returned Mail (#3).
3. The Plaintiff, Herman L. Barton, Jr., did not appear for the hearing scheduled for February 23, 2012.
4. On March 13, 2012, the Court issued an Order to Show Cause (#4) scheduling a Show Cause hearing for April 11, 2012.

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1 5. The Show Cause Order (#4) was served on the Plaintiff, Herman L. Barton, Jr., by
2 United States Postal Service Certified Mail. *See*, Certified Mail Receipt (#5).

3 6. The certified mail was returned to the court as undeliverable. *See*, Certified Mail
4 Return (#6).

5 6. Plaintiff, Herman L. Barton, Jr., did not appear for the Show Cause hearing
6 scheduled for April 11, 2012. Further, Plaintiff did not seek a continuance of the
7 hearing or provide a reason for his second failure to appear.

8 7. Plaintiff, Herman L. Barton, Jr., has failed to comply with the rules of this court in
9 that he has failed to keep the court apprised of his current address.

10 8. Plaintiff, Herman L. Barton, Jr., has taken no action in this case and has not had
11 any contact with the Court since his initial filing on December 28, 2011.

12 Based on the foregoing and good cause appearing therefore,

13 **RECOMMENDATION**

14 IT IS THE RECOMMENDATION of the undersigned Magistrate Judge that this case be
15 **DISMISSED WITH PREJUDICE.**

16 **NOTICE**

17 Pursuant to Local Rule IB 3-2 [former LR 510-2] any objection to this Report and
18 Recommendation must be in writing and filed with the Clerk of the Court within fourteen (14)
19 days after service of this Notice. The Supreme Court has held that the courts of appeal may
20 determine that an appeal has been waived due to the failure to file objections within the specified
21 time. Thomas v. Arn, 474 U.S. 140 (1985), reh'g denied, 474 U.S. 1111 (1986). This Circuit has
22 also held that (1) failure to file objections within the specified time and (2) failure to properly
23 address and brief the objectionable issues waives the right to appeal the District Court's order
24 and/or appeal factual issues from the order of the District Court. Martinez v. Ylst, 951 F.2d 1153
25 (9th Cir. 1991); Britt v. Simi Valley United Sch. Dist., 708 F.2d 452, 454 (9th Cir. 1983).

26 DATED this 24th day of May, 2012.

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ROBERT J. JOHNSTON
United States Magistrate Judge